

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

In the Matter of Jacob L. Bonniwell,
Petitioner,

vs.

The City of St. Paul,
Respondent.

**RECOMMENDED ORDER
ON CROSS MOTIONS FOR
SUMMARY DISPOSITION**

This matter came before Administrative Law Judge Amy J. Chantry for reconsideration of the Petitioner's Motion for Summary Disposition and City's Motion for Summary Disposition. The parties agreed that the only issues to be decided by the Administrative Law Judge are: (1) whether the City's expanded certification violates the Veteran's Preference Act; and (2) whether the City properly notified the Petitioner as to the reasons he was rejected after being certified for an interview in November 2011, November 2012, and March 2013.¹

Gail L. Langfield, Assistant St. Paul City Attorney, appeared on behalf of the City of St. Paul (Respondent or City). Charles A. Horowitz, Attorney at Law, and Andrew T. Jackola, Attorney at Law, appeared on behalf of Jacob L. Bonniwell (Petitioner).

RECOMMENDED ORDER

IT IS RECOMMENDED THAT:

- (1) The City's motion for Summary Disposition is **GRANTED**.
- (2) The Petitioner's motion for Summary Disposition is **DENIED**.
- (3) The Petitioner's appeal is hereby **DISMISSED**.

¹ The parties did not request that the Administrative Law Judge reconsider the issue of the Petitioner's standing, based on Administrative Law Judge James LaFaves' Order on Cross Motions for Summary Disposition, dated March 11, 2013.

- (4) The City notify the Petitioner in writing of the reasons he was not hired for the position of firefighter.

Dated: December 30, 2013

s/Amy J. Chantry
AMY J. CHANTRY
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Larry W. Shellito, Commissioner, Minnesota Department of Veterans Affairs, 206c Veterans Service Building, 20 West 12th Street, St. Paul, MN 55155-2079, (651) 757-1555, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Standards for Summary Disposition

The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. Summary disposition of a claim is appropriate when there is no genuine issue of material fact and one party is entitled to a favorable decision as a matter of law.² A material fact is one that is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact.³ In considering a motion for summary disposition,

² Minn. R. Civ. P. 56.03.

³ *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804 (Minn. Ct. App. 1984).

an Administrative Law Judge must view the evidence in the light most favorable to the nonmoving party.⁴

To obtain summary disposition, the moving party must establish that there is no genuine issue of material fact. The initial burden is on the moving party to establish a *prima facie* case for the absence of material facts at issue.⁵ Once the moving party has established a *prima facie* case, the burden shifts to the nonmoving party.⁶ When the movant also bears the burden of persuasion on the merits at trial, as the movant does in this case, its burden on summary disposition is to present “credible evidence” that would entitle it to a directed verdict if not controverted at trial.⁷ To defeat a motion for summary disposition successfully, the nonmoving party must show that specific facts are in dispute that have a bearing on the outcome of the case.⁸ The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party’s burden.⁹

Undisputed Material Facts

The City of Saint Paul,¹⁰ is a Minnesota city with a population of 285,068 according to the 2010 United States Census. The racial make-up of the City is approximately 60% white, 15% African American, 15% Asian, 9% Hispanic/Latino, and 1% Native American. Fifty-one percent (51%) the population is female. The City’s charter has an established personnel system. This system has set forth the merit system, established a civil service commission and directed the promulgation of civil service rules consistent with the merit system.¹¹

Civil Service Rule 7 directs that all applicants who have passed the examination for a particular position be placed upon an eligible list in order of their examination scores and applicants shall remain upon the eligible list until they are hired or until the list expires.

In the case of ranked testing, Civil Service Rule 8 provides a process by which a limited number of candidates from the eligible list are sent forth to an appointing officer for further consideration and eventual appointment. When a candidate is certified to the

⁴ *Grandahl v. Bulluck*, 318 N.W. 2d 240 (Minn. 1982); *Nord v. Herreid*, 305 N.W. 2d 337 (Minn. 1981); *American Druggists Insurance v. Thompson Lumber Co.*, 349 N.W.2d 569 (Minn. 1989).

⁵ *Thiele v. Stich*, 424 N.W.2d 580, 583 (Minn. 1988).

⁶ *Minnesota Mutual Fire and Casualty Company v. Retrum*, 456 N.W.2d 719, 723 (Minn. Ct. App. 1990).

⁷ *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2557, 91 L. Ed. 265 (1986) (dissenting opinion restating majority opinion); *Thiele*, 425 N.W.2d at 583, n. 1.

⁸ *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).

⁹ *Id.*; *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 512 (Minn. 1986).

¹⁰ Stipulation of Parties. The City’s form of government is a home rule charter. Home rule cities derive their powers from the charter, which also defines the specific powers of elected officials and appointed staff. The charter is, in effect, a local constitution. Charter adoption, amendment and abandonment procedures are found in state statutes.

¹¹ Ex. 1.

appointing authority along with other candidates, the appointing authority may appoint any eligible candidate certified.

In 1984, the City adopted an Affirmative Action Policy. The policy has been updated every ten years and adopted by the Saint Paul City Council. The City's Affirmative Action Plan has sections related to every office and department throughout the City.

The fire department is responsible for the establishment, maintenance and administration of an organized method for firefighting and fire prevention for the City. The fire department also provides ambulance and emergency medical services throughout the City. The fire department operates daily on a 24 hour basis. The department employs four hundred thirty-three (433) sworn officers in titles including firefighter, fire-equipment operator, fire captain, district chief, deputy chief, assistant fire chief, and fire chief. Personnel are assigned to 24 hour shifts on a rotating basis. The personnel are assigned to twenty-six (26) fire companies located at fire stations throughout the City.

The fire chief has general authority and control over all departmental staff and oversees the proper fulfillment of all tasks and duties assigned to the department. In January 2010, the City announced it was accepting applications for the position of firefighter. Two thousand five hundred fifty (2,550) applications for the position were received. Of those applications, two thousand three hundred sixty-one (2,361) applicants were approved for the exam process.¹² The Petitioner submitted an application for the position of firefighter.

The examination consists of two subjects, a written test and a physical performance test. The written test was administered first. In order to advance on to the physical test, the candidate was required to score 75% or better on the written test. When the two tests were combined for the final score, each subject was weighted equally. The written test was administered on March 8, 2010. The written test is a skills and aptitude test, covering a broad range of skills and abilities which were found to be important for the job of firefighter. The abilities include basic areas such as reading comprehension, verbal expression, reasoning, and problem solving. The personal characteristics include work style preferences, attitudes, behaviors and experiences that have been found to be important for the job of firefighter.

One thousand nine hundred fifty-two (1,952) candidates took the written test. One thousand four hundred forty-six (1,446) received a passing score and were thus qualified to participate in the physical performance test. The physical performance test was administered over several days in June 2010. This test was administered to one thousand seventy-eight (1,078) candidates. The physical performance test is a timed test and includes the following components: climbing stairs while carrying a hose bundle; dragging a charged hose line; dragging a 175 pound rescue mannequin;

¹² Because the position is a classified position, under the City's civil service rules, an examination for the position was conducted.

carrying a fan; and performing an exercise which simulates ventilation or chopping through a roof. In order to receive a passing score the candidate was required to complete these tasks within seven (7) minutes or less. Nine hundred seventy nine candidates (979) received a passing score on the physical performance portion of the examination.

The final test score was based upon a total point scale of one hundred (100). The candidates' passing raw test scores on both tests were converted to band scores pursuant to a test validation study and the recommendations from Dr. P. Richard Jeanneret. Banded scoring is a statistical procedure for grouping raw test scores that statistically are not meaningfully different from one another. The written test scores were banded in five (5) point intervals (ranging from a score of 80 to 100) and the physical performance test scores were banded into forty-five (45) second intervals (also ranging from a score of 80 to 100). The two banded scores are combined and averaged to provide an overall, final test score which is also banded. This results in nine possible final test scores for applicants (100, 97.5, 95, 92.5, 90, 87.5, 85, 82.5 and 80).

If the candidate received a passing score, in July 2010 pursuant to Minn. Stat. 197.455, five (5) veteran's preference points were added to those candidates' scores who had established the requisite military service and, ten (10) points were added to those candidates' scores who were disabled veterans within the definition set forth in the statute.

The Petitioner is an honorably discharged veteran within the meaning of the veteran's preference statute. In the course of his service, Petitioner received the Armed Forces Outstanding Unit Award, the National Defense Service Medal, the Armed Forces Training Ribbon, the Armed Forces Reserve Medal, and the Afghanistan Campaign Medal. In his application materials, the Petitioner has declared himself to be a white male without a disability. As such, he does not fall within the definition of protected class under Civil Service Rule 8.

Candidates who lived within the city of Saint Paul for one year prior to the application deadline received an additional five (5) points on their final passing score. Based upon a combination of examination scores, veteran's preference points, and points for City residency, an eligible list was established pursuant to the City's civil service rules on July 6, 2010. The Respondent's Exhibit 11 is a table identifying the number of candidates at each rank on the eligible list as of July 6, 2010.

The Petitioner achieved a final banded score of 97.5. As an honorably discharged veteran within the meaning of the Veteran's Preference Act, the Petitioner received five (5) additional points which resulted in a final score of 102.5. Respondent's Exhibit 12 is the letter dated July 8, 2010 sent to Petitioner regarding his examination scores, final scores and current rank on the eligible list.

An eligible list contains the names of all persons who passed the examination and are deemed “eligible” or qualified for the position. The 2010 Firefighter Eligible List contains nine hundred seventy-nine (979) candidates.

Since July 6, 2010, additional candidates have provided proof regarding their veteran’s status and therefore established their entitlement to veteran’s preference points. When the evidence is provided by a candidate, his or her rank changes on the eligible list and the list is correspondingly adjusted to reflect those changes.

The eligible list is a ranked list and candidates are placed in descending numerical order on this list. All candidates who receive the same score are considered tied at that score and placed at the same rank on the eligible list. Saint Paul Civil Service Rule 7 provides that an eligible list for the title of firefighter expire no longer than three (3) years after its establishment. Pursuant to council resolution, the Saint Paul City Council has provided that the 2010 Firefighter Eligible List is extended beyond the three year period until July 6, 2014.

Effective April 19, 2012, Minn. Stat. § 197.455 was amended to increase the number of points awarded to non-disabled veterans from five (5) to ten (10) and for disabled veterans, from ten (10) to fifteen (15). In response, the City re-ranked the eligible list to reflect those changes.

Vacancies in the Firefighter Title and Certification Process.

When vacancies exist within firefighter titles, a requisition form is sent to the Office of Human Resources. Due to the extensive nature of this hiring process, an estimate of the expected vacancies is presented in the requisition. Actual vacancies are determined at the time of hire which often takes place five or six months after the requisition.

Civil Service Rule 8 determines the method of creating a certified list or certification. In creating certifications, the City follows Saint Paul Civil Service Rules 8.B.1.c. and 8.B.1.a. When hiring candidates for positions within the City, the hiring authority is not required to hire candidates by rank order on the eligible list. Under Civil Service Rule 8, candidates for further consideration (i.e. certification) are selected pursuant to the City’s civil service rules drawing from the eligible list beginning with the highest band.

The number of candidates certified is determined by the following formula: the number of vacancies, plus two, plus all ties to be certified. In addition, and in accordance with Civil Service Rule 8, the same number of candidates from each protected class group are certified. Candidates from protected class groups based upon race are only certified if their rank score is in the top 33% of the eligible list. Candidates from protected class groups based upon gender are only certified if their rank score is in the top 45% of the eligible list. Certification by the use of this process has been referred to as “expanded certification.”

Certification #1—October 2010 (February 14, 2011 Academy)

In October 2010, following receipt of a requisition from the fire department for eighteen (18) candidates, the Office of Human Resources (HR) prepared a certified list of eligible candidates. One hundred one (101) candidates were sent to the fire department for consideration. This certification was comprised of twenty-six (26) candidates from the top three ranks (ranks 1, 3 and 9 with corresponding scores of 110, 107.5 and 105). The certification was also comprised of seventy-five (75) candidates from protected class groups who scored in the top 33% of the eligible candidates who were persons of color and/or disabled (ranks 27, 52, 113 and 226 with corresponding scores of 102.5, 100, 97.5 and 95), and females who scored in the top 45% of the eligible candidates (rank 384 with corresponding score of 92.5). The Petitioner does not dispute that the Office of Human Resources followed the Saint Paul Civil Service Rules in preparing the certified list of eligible candidates.

Following certification to the fire department, hiring interviews and background investigations of candidates choosing to proceed with the process of hiring are conducted. The results of the background investigations and interviews are presented to the fire chief and assistant fire chief. The fire chief makes a final determination in selecting the candidates who will receive offers of employment. The offer of employment is conditioned on a successful completion of medical and psychological testing.

From the first certification in January 2011, the City extended final offers of employment to 14 firefighters. The recruit academy began on February 14, 2012. The remaining candidates were informed that they would remain eligible for future consideration for firefighter job openings.

Certification #2—May 2011 (September 12, 2011 Academy)

In May 2011, a second certification process was commenced. The fire department sent its second requisition for 16 candidates. The Office of Human Resources prepared another certified list of candidates following the same procedures as with the first certified list. This list contained 88 candidates. The list was comprised of 22 candidates from the top three ranks (ranks 1, 3 and 10 with corresponding scores of 110, 107.5 and 105) and sixty-five (65) candidates from protected class groups (ranks 102.5, 100, 97.5, 95 and 92.5). The Petitioner does not dispute that the Office of Human Resources followed the Saint Paul Civil Service Rules in preparing the certified list of eligible candidates.

As before, following the background investigations and interviews, the fire chief made the final determinations as to which of the candidates would receive conditional offers of employment. After the completion of medical and psychological testing, 10 candidates were hired.

Certification #3 -- November 2011 (March 19, 2012 Academy)

In November 2011 the Fire Department sent a third requisition to Human Resources for 16 vacancies. In return, Human Resources sent a certified list of ninety-two (92) eligible candidates. Forty candidates from the top three ranks (ranks 3, 11 and 31 with corresponding scores of 107.5, 105 and 102.5) were certified along with 52 candidates (ranks 100, 97.5, 95 and 92.5) from the protected class groups. The Petitioner was included in this list as an eligible candidate. The Petitioner does not dispute that the Office of Human Resources followed the Saint Paul Civil Service Rules in preparing the certified list of eligible candidates.

Since his final score was 102.5, and he possessed a driver's license and EMT certification, Petitioner was certified by Human Resources at this time and participated in the background and interview process with the other interested candidates.

Sixteen candidates were hired for the academy which began March 19, 2012.

Certification #4 -- May 2012 (September 17, 2012 Academy)

The fourth certification process for hiring firefighters began in May 2012. The Fire Department sent a requisition to Human Resources for 10 candidates. Human Resources returned a certified list of 61 candidates. The list included sixteen (16) candidates from the top three ranks (ranks 3, 11 and 23 with corresponding scores of 112.5, 110 and 107.5) and forty-five (45) candidates from the protected class groups. Petitioner's score was now 107.5 and he was included in this list as an eligible candidate

Ten (10) candidates received final offers of employment for the academy which began on September 17, 2012.

Certification #5 -- November 2012 (March 18, 2013 Academy)

The fifth certification process for hiring firefighters began in November 2012. The Fire Department sent a requisition to Human Resources for seven (7) candidates. Human Resources returned a certified list of forty-one (41) candidates. The list included eleven (11) candidates from the top three ranks (ranks 3, 11 and 23 with corresponding scores of 112.5, 110 and 107.5) and thirty (30) candidates from the protected class groups. Petitioner was certified in this process. The Petitioner does not dispute that the Office of Human Resources followed the Saint Paul Civil Service Rules in preparing the certified list of eligible candidates.

Three candidates from the 2010 Firefighter Eligible List received final offers of employment for the academy which began March 18, 2013.

Certification #6 -- March 2013

The sixth certification process for hiring firefighters began in March 2013. The Fire Department sent a requisition to Human Resources for eleven (11) candidates.

Human Resources returned a certified list of fifty-seven (57) candidates. The list included twenty-nine (29) candidates from the top four ranks (ranks 3, 11, 23 and 39 with corresponding scores of 112.5, 110, 107.5 and 105) and twenty-eight (28) candidates from the protected class groups. Petitioner was certified in this process. The Petitioner does not dispute that the Office of Human Resources followed the Saint Paul Civil Service Rules in preparing the certified list of eligible candidates.

To date, the Petitioner has not received an offer of employment. To date, the City has extended offers of employment to seventeen (17) veterans who took the 2010 firefighter examination.

It is unlikely that candidates self-identified as white, able-bodied males achieving a ranked score of 100 who have not yet been certified will be certified in the future for further consideration before the eligible list expires in July 2014. It is highly unlikely that candidates self-identified as white, able-bodied males achieving a ranked score of 97.5, who have not yet been certified, will be eligible for certification prior to the expiration of the eligible list in July 2014.

In each round, following the selection of the candidates for employment, Petitioner along with other candidates who did not receive offers of employment were sent letters regarding the outcome of the hiring process. Final determinations on candidates to be hired have not been made for the March 2013 certification process.¹³

Analysis

St. Paul Civil Service Rule 8 governs the filling of vacancies on the Fire Department. The hiring of firefighters in the City is based on a 100 point scale. Following the scoring of each exam, veteran's preference points are added to those candidates' scores who have demonstrated that they are veterans within the meaning of the statute.

Civil Service Rule 8 deals with the certification process. The certification process determines which applicants of those who passed the City's civil service examination for the position of firefighter and who have the required EMT certification, high school diploma or GED, will be selected for an interview. Under Civil Service Rule 8, each certified list is required by a so-called "Rule of 3" to have the three highest scoring eligibles from the list, plus ties, be selected to interview for a single vacancy. In the event of multiple vacancies, which was the case here, the number of highest scoring eligibles on the list necessary to fill the number of vacancies, plus two additional scores, plus ties were selected to interview.

The Petitioner argues that the City's "expanded certification" of protected class groups violates the Veteran's Preference Act (VPA), because the City interviewed and hired minority and female applicants who were not veterans and who had lower examination scores, over him. The Administrative Law Judge disagrees.

¹³ Joint Stipulation of Facts.

The VPA does not guarantee that a public employer will hire a veteran in preference over a non-veteran and it does not require that a veteran even receive an interview. The VPA only requires that the veteran receive an increased opportunity to interview.

In *McAfee v. Dept. of Revenue*, 514 N.W.2d 301 (Minn. Ct. App. 1994), the Court of Appeals confirmed the general proposition established in *Hall v. City of Champlin*, 463 N.W.2d 502, 504 (Minn. 1990), that:

Finally, even if McAfee had received a veteran's preference credit, he still would not be entitled to the relief he seeks, that is, appointment to the Attorney I position. Section 43A.11 does not provide absolute preference for veterans; veteran's preference credit may increase the chance that the veteran will receive an interview, but the appointing authority may hire any certified applicant.¹⁴

The legislature contemplated that veteran's preference points are to be applied at the stage of a hiring process when a public employer determines which applicants will receive an interview.¹⁵ In *Bentzen v. Hennepin County*, OAH 4-3100-21648-2, 4-3100-21444-2 (February 28, 2011), the ALJ held: citing *McAfee*:

The Veteran's Preference Act does not guarantee a public employer will hire a Veteran in preference over non-veterans; it does not even require that a veteran receive an interview. Rather it only requires that the veteran receive an increased opportunity for an interview when the veteran meets the minimum qualifications for the position, and examination is an experiential examination based on interviews of the applicants.¹⁶

Here, there is no dispute that prior to being ranked and placed on the list of eligible candidates in October 2010 and May 2011, the Petitioner's score was increased to reflect his veteran's preference under the VPA. As a result, the City complied with the VPA. Unfortunately for the Petitioner, even with the additional veteran's preference points that he was awarded under the VPA, the Petitioner's score did not place him above the cut-off scores under the Rule of 3 for the granting of an interview.

Moreover, even if candidates from the separate groups of protected class candidates had not been included in the certified lists of October 2010 and May 2011, the Petitioner still would not have been included on the list of certified eligible candidates and allowed to interview. The Petitioner did not score high enough to make the cut-off points for an interview. In October 2010, the Fire Department notified the City's Office of Human Resources of its need for 18 candidates. In response, Human Resources prepared a certified list of eligible candidates and 101 candidates were sent to the Fire Department for consideration. In applying the Rule of 3, the certification was

¹⁴ *McAfee, supra*, 514 N.W.2d at 305.

¹⁵ *Hall, supra* at 504; *McAfee, supra*, at 305.

¹⁶ *Bentzen, supra* at 15.

comprised of 26 candidates from the top three ranks (ranks 1, 3 and 9 with corresponding scores of 110, 107.5 and 105). The Petitioner's score was only 102.5, which placed him 24th on the eligible list, after being awarded the required points as a non-disabled veteran. The Petitioner's score of 102.5 was below the cut-off score of 105.

In May 2011, the Fire Department notified Human Resources of its need for 16 candidates. In response, Human Resources prepared a certified list of candidates. Again, in applying the Rule of 3, 88 candidates were placed on the list. The list was comprised of 22 candidates from the top three ranks (ranks 1, 3, and 10 with corresponding scores of 110, 107.5, and 105.) The Petitioner was ranked at 29th on the eligible list with a score of 102.5. Again, the Petitioner failed to meet the cut-off score of 105, even after being awarded veteran's preference points. The Petitioner would not have been certified under the Rule of 3 in May 2011, even without the expanded certification of minority, disabled, and female candidates.

The City's practice of expanded certification does not violate the Veteran's Preference Act. The concept that a city may apply cut-offs to scores if the veteran does not achieve a score higher than the cut-off for an interview was upheld by the Minnesota Court of Appeals in *Utsch v. Big Stone County*.¹⁷ Expanded certification gives more minority, disabled, and female applicants an opportunity to interview by adding to the applicant pool. The Petitioner was not denied an opportunity to interview because of the City's expanded certification. The Petitioner was denied the opportunity to interview in October 2010 and May 2011 because he scored below the City's cut-off score for interviews. Therefore, the Administrative Law Judge respectfully recommends that the Petitioner's Petition be **DISMISSED**.

Rejection Notice Requirements

The Petitioner was certified for an interview in November 2011, November 2012, and March 2013. The Petitioner argues that he was denied his right to receive written notice of the "reasons" he was not hired for a firefighter position. The City maintains that the Petitioner was provided sufficient notice of why he was rejected as a firefighter. Pursuant to Minn. Stat. § 197.455, subd. 10, if the appointing authority rejects a certified eligible who has received veteran's preference, the appointing authority shall notify the eligible in writing of the reasons for the rejection and file the notice with the appropriate local personnel officer.

The Administrative Law Judge agrees with Petitioner that he was denied his right to receive written notice of the "reasons" he was not hired for a firefighter position as required under Minn. Stat. § 197.455, subd. 10. In a letter dated July 26, 2012, Terry Haltiner, Senior Human Services Consultant, informed the Petitioner that he was not hired because "we have only 10 positions open at this time. Therefore, I am unable to offer you a position today." The letter also noted that the Petitioner's name would be

¹⁷ *Utsch v. Big Stone County*, 1997 WL 527234 (Minn. Ct. App. 1997).

retained on the eligible list for future openings, and he was encouraged to continue his professional development.

While the Petitioner was told that he was not hired because of the limited number of openings, he was not provided specific information about why **he** was not hired. In fact, the Petitioner was sent a copy of the same letter that the City sent to all applicants who were not hired for firefighter positions. Since the Petitioner was certified, and thus, could be hired as a firefighter for the City, the Petitioner must have demonstrated some weaknesses as part of his interview that prevented him from being hired. The City should have to provide the Petitioner with feedback information from his interview, so that the Petitioner has the opportunity to improve his interview skills. Thus, the City failed to provide the Petitioner with the reasons that he was not hired a firefighter as required by Minn. Stat. §197.455, subd. 10. Accordingly, the Administrative Law Judge respectfully recommends that the Commissioner order the City to comply with Minn. Stat. § 197.455, subd. 10, by sending the Petitioner a written notice that contains the specific reasons why he was not selected.

A. J. C.